Arizona Medical Board

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FINAL MINUTES FOR BOARD OFFSITE PLANNING MEETING
Held at 9:00 a.m. on May 14, 2004
The University of Arizona Foundation, Room 303, 1111 North Cherry Avenue, Tucson, AZ

Board Members

Edward J. Schwager, M.D., Chair
Sharon B. Megdal, Ph.D.,Vice Chair
Robert P. Goldfarb, M.D., Secretary
Patrick N. Connell, M.D.
Ronnie R. Cox, Ph.D.
Ingrid E. Haas, M.D.
Tim B. Hunter, M.D.
Becky Jordan
Ram R. Krishna, M.D.
Douglas D. Lee, M.D.
William R. Martin III, M.D.
Dona Pardo, Ph.D., R.N.

Board Counsel

Christine Cassetta, Assistant Attorney General

Staff

Barry A. Cassidy, Ph.D., P.A.-C., Executive Director
Barbara Kane, Assistant Director / Investigations & Quality Assurance
Randi Orchard, Chief Financial Officer
Gary Oglesby, Chief Information Officer
Lisa McGrane, Legal & Communications Coordinator
Mary Ann Hamm Thyme, Board Operations Coordinator

CALL TO ORDER

Edward Schwager, M.D. called the meeting to order at 9:03 a.m.

ROLL CALL

The following Board Members were present: Robert P. Goldfarb, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D. The following Board Member arrived to the meeting at 11:35 a.m.: Patrick N. Connell, M.D. The following Board Members were absent from the meeting: William R. Martin, III, M.D., and Ronnie R. Cox, Ph.D.

CALL TO THE PUBLIC

There was no one present at the call to the public.

CHAIR'S REPORT

Review of Executive Director's Performance & Salary Review

MOTION: Douglas D. Lee, M.D., moved to go into executive session at 9:05 a.m.
SECONDED: Sharon B. Megdal, Ph.D.
VOTE: 9-yay, 0-nay, 0-abstain/recuse, 3-absent
MOTION PASSED.

The Board returned to open session at 9:50 a.m.

CHAIR'S REPORT (Continued)

Review of Executive Director's Performance & Salary Review

MOTION: Tim B. Hunter, M.D., moved for the Board's Chair to meet with the Executive Director and review his performance evaluation.
SECONDED: Douglas D. Lee, M.D.
VOTE: 9-yay, 0-nay, 0-abstain/recuse, 3-absent
MOTION PASSED.

FORMAL INTERVIEW REQUIREMENT PURSUANT TO WEBB V. BOARD OF MEDICAL EXAMINERS

Christine Cassetta, Board Counsel, reiterated to the Board Members the importance of determining, at the conclusion of a formal interview, whether a statute had been violated before discussing any possible disciplinary action. Once the motion for the violation passes the Board can begin to discuss any disciplinary action and can use the Disciplinary Rules for guidance. Edward J. Schwager, M.D., stated that the maker of the motion should state the aggravating and mitigating factors prior to making the motion for disciplinary action. Ms. Cassetta also stated that the maker of the motion may include pertinent points of the discussion into the motion in order to be clear that it was the consensus of the Board Members and not just the opinion of one Board Member. Ram R. Krishna, M.D., expressed concern that he does not always agree with the points brought out in the discussion and if those points were part of the motion he would not necessarily support it. Ms. Cassetta stated that there has been litigation in the past where the parties argued that the Board as a body did not take a position on an issue because all that was in the record was the comments of one Board Member. The Attorney General's (AG) Office took the position that the entire Board adopted those comments by passing the motion. In order to avoid these arguments in the future, Board Members may wish to state that they support or do not support a motion with specific reasons. Stephen Wolf, Assistant Attorney General, commented that individual comments of Board Members are helpful, but they really tell what a particular Board Member said and not necessarily what the vote meant. Specifically if the Board deviates from an Administrative Law Judge's (ALJ) recommendation of the Findings of Fact, Conclusions of Law, and Order the Board needs to state for the record why it is doing so. This is particularly important if an appeal is later filed. Sharon B. Megdal, Ph.D., clarified with Mr. Wolf that the problem is more of silence and not articulating the reasons. Douglas D. Lee, M.D., reiterated that if Board Members articulate a reason then other Board Members could agree or disagree rather than articulating the reasons over. Ms. Cassetta mentioned that when the Dental Board considers an ALJ decision each Board Member comments about his/her reasons for supporting, or not supporting, the motion when they vote.

BOARD MEMBER LIABILITY/MEETING DECORUM/ABSTAINING FROM A VOTE

Ms. Cassetta informed the Board Members that an "abstain" vote is best used in circumstances where, after considering all the evidence and discussion during Board deliberations, the Member simply cannot decide the question.

REPRESENTATION OF MEDICAL BOARD BY ATTORNEY GENERAL'S OFFICE

Ms. Cassetta submitted written materials to the Board Members for their review of the duties that she and the Litigators perform.

Dr. Megdal asked for clarification about when Assistant Attorney General (AAG) Litigators are allowed in the Board's executive sessions. Dr. Megdal noted she was specifically asking about when the Board is obtaining legal advice on cases that have not yet been referred to Formal Hearing, but may be. Dr. Megdal referred to a previous Off-Site Planning meeting when the Board raised concerns that there was a problem if the AAG Litigators were giving legal advice then representing the Board at Formal Hearing. Mr. Wolf stated that the only time there is a conflict is when an AAG Litigator is actually litigating a case that has been referred to Formal Hearing. Once a case has been referred to formal hearing through the Board deciding that case after hearing, the AAG Litigators are considered partisan. However, before a case is referred to formal hearing or after the Board has decided a case following a formal hearing, the AAG Litigators may advise the Board on the merits of a case and recommend where the case may go. In these situations, the Board will also have the independent advice of the Board's Legal Advisor. The Litigators fill a different role than that filled by the Legal Advisor. Dr. Schwager stated that he is also uncomfortable when the AAG Litigators are in executive session with the Board. Ms. Cassetta stated that she has asked a Litigator to accompany her into executive session only when she anticipates from listening to the Board's discussion that one of the questions the Board will be asking is specifically related to the underlying evidence in the case or the direction the investigation has taken. In these instances, since she is not involved in the investigations, the Litigator may be better able to answer the Board's questions. Dr. Krishna stated that he would support Ms. Cassetta's discretion when she asks for help from the AAG Litigators. Mr. Wolf stated that there are very few instances that the AAG Litigators should have contact with the Board Members. Summary Action cases fall into that category. AAG Litigators should not appear before the Board with every summary action case, but only if there are serious concerns about the grounds for such an action. Summary Action cases are different because of the time constraints as well as the need to make an immediate judgment. If the AAG Litigators see a problem with a case, the Executive Director

REPRESENTATION OF MEDICAL BOARD BY ATTORNEY GENERAL'S OFFICE (Continued)

and Investigative Staff will be alerted in an attempt to prevent moving things forward until there is sufficient information to proceed. The Board members agreed that would be appropriate. Dr. Megdal stated that a Summary Action is sending a case to Formal Hearing. She stressed the importance of discussing the process regarding when the AAG Litigators get involved with certain recommendations. She also stated that the Board is at times forced to go into executive session and questioned how Summary Action cases are handled in terms of obtaining AAG Litigator or Enforcement's input before the case is even placed on an agenda for Summary Action. Mr. Brekke stated that he reviews all cases to determine if there is a reasonable basis for proceeding prior to the case being placed on the agenda for Summary Action. Mr. Wolf stated that it is not about the merits of the underlying case when it gets to Formal Hearing, but whether there is evidence to proceed with a Summary Action because of the potential liability of the Board in acting without there truly being imminent danger. Ms. Cassetta stated that the AAG Litigators determine if there is enough evidence for the Board to consider a summary action. They will also go on to discuss the underlying material for the Formal Hearing. Dr. Krishna agreed that the Board should obtain the proper advice. Mr. Wolf addressed Dr. Megdal's concerns and stated that the AAG Litigators can explain the merits to the Board regarding a Summary Action, but cannot say if the physician deserves discipline or not. Tim B. Hunter, M.D., would prefer to be certain about sending a case for a Summary Action because of the liability, specifically if lost wages could occur for a physician.

WORKING WITH COURT REPORTERS

Ms. Cassetta informed the Board Members that she and Board Staff met with the court reporters last week and the court reporters requested that the Board Members identify themselves as they make and second a motion. Ms. Cassetta also noted that the court reporters complimented the Chair, Dr. Schwager, for the way he runs the meetings. The court reporters also requested that the Chair have all persons appearing before the Board, including Staff, identify themselves for the record, be clear, and audible. The court reporters will be submitting a booklet for the Board Members to review in order to assist them in working with the court reporters. Ms. Cassetta also informed the Board Members that the court reporters seat would be moved from the end of the Board "bench" to in front of Board Staff to improve the court reporter's ability to hear the testimony.

ROLE OF THE ATTORNEY GENERAL LITIGATORS

Dr. Schwager stated that he believed the investigative branch of the agency should be supported by the AAG Litigators and kept at arm's length from the Board. The AAG Litigators are making a conscious effort to review cases on timelier basis. The AG's Office has been receiving the cases on CD-Rom from Board Staff and this has helped the process. Mr. Brekke stated that there have been a few questions from the Board regarding specific cases, but the AG's Office cannot reply until the cases have been brought back to the Board for adjudication. This is why the Board is not given status reports. Dr. Hunter asked if the Board Members would be able to receive a status report informing them of cases still under investigation regarding appeals or schedules of a Formal Hearing. Mr. Wolf said that would be appropriate and could work on information that could be included that will not influence the Board's decisions adjudicating Formal Hearing cases. Mr. Brekke advised that an AAG Litigator was attending the Staff Investigational Review Committee (SIRC) meetings in order to ensure that a case has met all of the legal requirements before being forwarded to the Board for consideration. The Litigator does not vote or direct the meeting, but merely serve as a legal advisor.

Mr. Brekke informed the Board of a program with the Arizona Government University (AGU) for training investigators. He stated that the program provides thorough training on Arizona Laws and how to apply them. Assistant Attorneys General and long-time Investigators of other State agencies instruct the classes. One area of training would be how to testify. It would also be helpful in the presentation of cases to the Board or a Judge because it teaches how to be persuasive and clear with what is important to a case.

Robert P. Goldfarb, M.D., stated that on occasion when he is reviewing the cases it becomes apparent that the physician might not have been noticed on an applicable statute that appears to be a violation. Ms. Cassetta noted that this should happen less frequently since the AAG Litigators participate in SIRC. However, if this were still to occur the Board could ask the physician if he/she waives the notice and consents to the Board considering the violation. If the physician agrees, the Board can proceed. If the physician declines to waive notice, the Board can choose to act only on the noticed violations, or to continue the interview. The physician would then receive proper notice and be given an opportunity to respond. If the violation that was not noticed is the type that would need expert review (either on behalf of the Board or the physician) the Board may choose to continue the interview rather than ask for a waiver. Dr. Schwager stated that if the Board Members on review of the material discover a violation that was not noticed to the physician they should direct that information to the Executive Director, so he can deal with it.

PROCESS

Overview

Barbara Kane, Assistant Director / Investigations & Quality Assurance, submitted to the Board Members an outline of the process for "Complaint Investigation Process Flow." She stated that the investigative process has undergone incremental changes since July of 2003. Those changes were implemented to improve the overall quality of the investigation. Board

PROCESS (Continued) - Overview

Staff now scans all evidence and is currently working on improving the quality in order to make the documents easier for the Board Members to find quickly. An Intake Officer position has been created. This person determines the course of an investigation by determining the allegations and the statutes initially noticed. The Intake Officer also determines if a case will be categorized as a "Professional Conduct" or "Quality of Care" case. Professional Conduct cases are given special care in order to apply the appropriate statutes to the allegation. She stated that this is to avoid having to re-notice additional allegations later down the road. The system is limited to the lack of sufficient evidence initially provided to the Intake Officer by the complainant. This means re-notice cannot be entirely eliminated. If the case is determined to be a Quality of Care case, a licensed medical professional writes the allegations in order for the wording of the allegation to make medical sense to the physician.

Ms. Kane stated that there has also been an additional review implemented for accuracy. Prior to assigning a case to an Investigator, the Division Chief flags the non-medical issues in a medical case allowing the Investigator to address them while the evidence is being requested.

Ms. Kane informed the Board Members of a change implemented to the Investigative Report and presentation to the Board. Regarding Quality of Care cases she explained that in the past the Investigators would take information they felt was relevant to a case directly from the Medical Consultant's Review and Summary. A new process was designed for the Medical Consultants to dictate the Investigative Report, defining the proposed standard of care, the actual or potential harm, and a physician's deviation from that proposed standard. She stated that this eliminated the requirement of multiple reports. Non-medical issues are incorporated into the Medical Consultants Investigative Report. Once the Medical Director has reviewed the case it is then forwarded to SIRC for supported allegations or to the Executive Director for dismissal if the allegations are not supported. The cases are now presented to the Board by the Medical Consultants who answer any questions the Board might have.

Professional Conduct cases also have multiple levels of review for quality and thoroughness. Specifically for the review of the thoroughness of the investigation, appropriate statutes noticed, and the investigative findings. Professional Conduct cases now rotate through SIRC. SIRC will then recommend the case be returned for further investigation or medical review, forwarded to the Executive Director for dismissal, or forwarded to the Board for adjudication. Mr. Brekke attends the SIRC meetings to render legal advice if necessary.

Ms Kane reviewed a newly implemented process for handling the appeals of the Executive Director's dismissals. Ms. Kane now reviews all appeals upon receipt. This includes a review of the original complaint investigation to determine if new evidence has been submitted or if the original investigation failed to address any of the original complaints. Once Ms. Kane has completed her review, she determines whether to route the case to the Executive Director with a recommendation to re-open the investigation for further work or to the Medical Director with a recommendation for another medical review from a different Medical Consultant if possible. The Medical Consultant dictates a supplemental Medical Consultant Report after the review of the appeal. The case is forwarded for the next Board meeting agenda if the Medical Consultant's finding is to uphold the Executive Director's dismissal of the case. If the findings support the appeal allegations, the case is re-opened and forwarded to SIRC for further review and recommendation.

Ms. Kane informed the Board Members that she has been conducting training sessions with the Investigative Staff. She commented that she would support Mr. Brekke's suggestion regarding Board Staff obtaining investigative training with the Arizona Government University (AGU). She has also asked that the Board's Legal Counsel review the statutes with the Investigators so they will have a full understanding of them. She stated that this would also prevent having to re-notice the physician's of additional statutes to support allegations. Dr. Krishna stated that he also supports Mr. Brekke's suggestion about investigative training with AGU.

Dr. Megdal commented that feedback indicates a lack of contact from Board Staff. Ms. Kane urged the Board Members to review the Investigation Activity for each case that shows in detail any conversations between an Investigator and a complainant. Dr. Hunter verified with Ms. Kane that the complainant is mailed a letter to inform them that the Board has received their complaint. Ms. Kane stated that the initial letter also gives the complainant a list of the allegations to confirm that the Board has captured the complainant's intent. Dr. Hunter asked if that was the only communication with the complainant. Ms. Kane stated that if Board Staff needs additional information they contact the complainant. She is working with Gary Oglesby, Chief Information Officer, to develop an automated system to update the complainant every three months. Dr. Hunter confirmed with Ms. Kane that a final letter is mailed to the complainant when a case is dismissed. Ms. Kane stated that the one person writes the dismissal letters incorporating the Medical Consultants findings in order to inform the complainant of the issues and explain why the case was dismissed. Dr. Schwager confirmed with Ms. Kane that the automated system would also update the physician.

Dr. Schwager stated that the perception of some physicians is that they have had no further contact from the Board until the Board hears the case of dismisses it. Also, some cases do not go to SIRC, but directly to the Executive Director for dismissal. Ms. Kane agreed, but stated that cases do go to SIRC if the Outside Medical Consultant and Board Medical

PROCESS (Continued) - Overview

Consultant do not agree with each other to support or not support the allegations. Those cases are forwarded to the Board for adjudication. Ms. Kane informed the Board Members that SIRC consists of the Board's Intake Officer, the Board Operations Coordinator, a rotating Medical Consultant, and Mr. Brekke. Ms. Cassetta asked Ms. Kane how SIRC handles a case if the rotating Medical Consultant is the one that reviewed the case and wrote the report. Ms. Kane said that has not been a problem because the Medical Consultant is in a different role in SIRC and is determining if the allegations have been supported or not. Ms. Kane stressed that there is not enough staff to deal with the scheduling issues of SIRC. Ms. Cassetta asked if this would be a litigation problem. Mr. Wolf commented that it would be a problem if the Medical Consultant who applied the standard of care then directed how that case should be forwarded, specifically if discipline is a factor. Mr. Brekke disagreed. He stated that from observing a discussion where this type of situation occurred, the Medical Consultant made an opinion as to the direction of the case and the committee did something different with it. The committee did deal with the issue in an open discussion. Mr. Wolf expressed concern that there is only one medical professional in SIRC. Dr. Megdal also expressed concern. She asked if minutes were recorded from the SIRC meetings. Ms. Kane confirmed that the meeting is taped. Ms. Kane also stated that if the votes are not recorded in the report, that equates to a majority vote or a unanimous vote. The Board Members asked whether the Medical Director attends the SIRC meetings. Dr. Megdal stated that people's perspectives of the process seem to be different. She stated that as long as there is consistency with the meeting, she is fine with the process the way it is. Ms. Kane stated that William Kennell, M.D., Board Medical Consultant, is the permanent Medical Consultant on SIRC. Dr. Hunter verified with Ms. Kane that there is consistency with Dr. Kennell being the permanent Medical Consultant attending SIRC and there is an additional rotating Medical Consultant from time to time. Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, clarified from a process standpoint that SIRC meetings cannot just stop if a SIRC member is sick or on vacation. The "roles", rather than the people, are defined and back up members are designated.

Implications of Technology

The Board Members discussed the structure of the Teleconference meetings. Dr. Hunter stated that the regular meetings might run smoother and timelier if more cases were added to the Teleconference meetings. Dr. Schwager stated that because schedules of the Board Members the Teleconference meetings should only last approximately 15-20 minutes. He also suggested that the Board Members identify themselves before they speak. Mr. Oglesby brought up the issue of adding cases at the last minute if they involve a physician returning to work. Mr. Wolf stated that these types of cases do need to be expedited. He suggested that in the future, to prevent urgent situations, wording could be added to the initial Practice Restriction that the case would not go to the Board on an emergent basis. Mr. Wolf explained that the issue is whether the grounds of the original request exist once the physician has been treated and released because that is where the Board faces liability and an Interim Consent Agreement might be a way around this issue. Ms. Cassetta clarified that the Executive Director may execute Interim Consent Agreements for Practice Restriction, but not for placement in the Monitored Aftercare Program (MAP).

Ms. Kane asked if the Board Members would prefer that Board Staff give a presentation automatically during a teleconference or wait until the Board Members request it. Dr. Schwager stated that the answer would be variable, but if there is something important that the Board Members need to know, then Board Staff should make a presentation or comment.

Mr. Oglesby brought up issues with Call to the Public. Dr. Schwager suggested that Board Staff start tracking the numbers of persons who speak at the Call to the Public so he can better plan future Board meetings. Dr. Megdal suggested that if a person appears at the Call to the Public, the Board should hear the case at that time, out of courtesy. Dr. Schwager suggested holding the Call to the Public in the afternoon of the first day, followed by discussion of the Non-Time Specific Items for the remainder of the day with the Formal Interviews to be held in the morning. Ms. Cassetta noted that this would prevent the public from speaking to the Board before the case was called and this was problematic. Mr. Oglesby stated that Board Staff could accommodate this for the August 2004 Board meeting.

Mr. Oglesby confirmed with the Board Members that they wished to continue using the voting software program to record their votes. Mr. Oglesby stated that he would be able update the voting software to add a voter confirmation that will tell the voting member how the vote was recorded to ensure accuracy. Dr. Hunter commented that he does, however, have a problem with the results that are displayed only for a short time. The Board Members mentioned that they would prefer not to see how other Board Members vote during voting so that it will not sway the outcome. Mr. Oglesby stated that he could modify the program to accommodate their request. Dr. Megdal suggested having the motion on the projection screen even prior to the vote. Dr. Hunter commented that the physician would then be able to see, know, and understand what the Board was voting on. Mr. Oglesby informed the Board that he would be able to accommodate this request.

Dr. Megdal suggested displaying the case number on the projection screen coinciding with the Call to the Public. Mr. Oglesby stated that he would like to build an electronic Call to the Public system that would include a kiosk or laptop for Board Staff handling the Call to the Public. This would allow individuals the ability to log in and this will electronically send the information to the Chair and the projection screen.

PROCESS (Continued) - Implications of Technology

Mr. Oglesby inquired if the Board Members would be interested in implementing videoconferencing for Call to the Public. The Board Members all concurred that this was not the direction to go.

Mr. Oglesby informed the Board Members of the improvements with the scanning process. The Board Members expressed an interest of a secure Board Member website for tools and information that they could access quickly.

Mr. Oglesby asked the Board Members for their recommendation on how Board Staff should handle and distribute materials submitted by physicians at the last minute and whether they wanted the materials at all. Ms. Cassetta clarified that Board Staff is obligated to accept last minute materials and must provide them to the Board Members the day of the meeting, but the Board Members are not obligated to review the materials. Ms. Cassetta stated that another option would be to put a copy of the materials in the Board break room for their review rather than distributing the materials. She also stated that if a Board Member does review an article/materials submitted at the last minute that changes his/her thought process, that Board Member should decide if he/she believes the interview should be continued to allow the materials to be considered. Dr. Goldfarb expressed concern about last minute materials from an investigative point of view. Ms. Cassetta informed him that if the Board is unsure whether the materials would impact the outcome of their review, the Board could continue the interview.

Ms. Cassetta suggested that Board Staff change the letters to the physician's reflect that they must submit any materials ten business days prior to the meeting and if the physician wishes to submit anything after that time he/she must provide enough copies for the Board. Also, the letter should note that the materials will not be provided to the Board prior to the meeting and that the Board may decline to review the material. Dr. Hunter suggested that the letter should also note that if enough copies are not provided then one copy will be placed in the Board break room for Board Member review and will not be distributed. Dr. Megdal suggested adopting a rule regarding the submission of materials to the Board, specifically in regard to how the Board will consider the matter. Ms. Kane stated that it is difficult for an Investigator to read the newly submitted materials and listen to a formal interview at the same time in order make an appropriate and accurate comment. Mr. Wolf suggested that the Board request that the physician or attorney explain, in a brief 30-second summary, what material has been submitted and also explain why it would turn the case. If they have a good explanation, the Board could decide whether the material was relevant. Mr. Wolf stated that another option would be to take a 15-minute recess to review the materials or postpone the formal interview to when time allows later in the meeting and move on to the next case. Ms. Cassetta suggested that a letter be sent to the physician during the investigative process noting that the case is wrapping up and is going to SIRC for review and that if the physician has any additional materials to submit then he/she needs to do so by a specific date. This would explain the urgency to the physician of getting any additional materials to the Board and also that he/she may want to seek legal counsel.

Mr. Oglesby stated that the Board laptops have started to age. The process of replacing them will begin this fall.

DISCIPLINE

Civil Penalties

Lisa McGrane, Legal and Communications Coordinator, submitted a memo to the Board Members regarding civil penalties and how they are imposed in other states. If the Board decides to impose civil penalties, she asked that they provide guidance of when to use them and suggested that they be added to the disciplinary rules. Dr. Schwager asked for clarification regarding the benefits of imposing civil penalties to protect the public and rehabilitate the physicians. Mr. Wolf stated that if a physician receives ill-gotten gains the State should be able to assess the amounts and fine that physician appropriately. Ms. Cassetta clarified that the statutory civil penalty range is not less than $1,000.00 or more than $10,000.00 for each violation. Dr. Schwager stated that if this is the consensus of the Board a subcommittee should be appointed to work on civil penalty guidelines. Ms. Cassetta referred to Ms. McGrane's recommendation for imposing civil penalties for false advertising, charging a fee for a procedure not performed, and obtaining a fee by fraud. The Board could use that recommendation as a reference, expand on it, and not put a limit to the specific items, but leave room for the Board to impose a civil penalties if it were to come across an egregious circumstance. Dr. Hunter would support imposing a civil penalty for unethical, repeated, or egregious cases.

The Board Members discussed charging a physician for the cost of the Board's investigation. Dr. Megdal would not support this because the Board is already charging a licensing fee. Dr. Hunter stated it is not reasonable for the physicians paying their licensing fee to cover the cost of another physician's investigation cost either. Ms. Cassetta commented that the Board might have to consider reducing licensing fees if the Board were to charge physicians the cost of their investigation. Dr. Hunter verified with Randi Orchard, Chief Financial Officer, that recovered probation costs would go back to the Board's fund. Dr. Megdal asked if Ms. McGrane could investigate if other states have performed studies of the public's perception of fines as disciplinary actions.

PROCESS (Continued) - Civil Penalties
MOTION: Patrick N. Connell, M.D., moved that the Chair appoint a subcommittee in the matter of Civil Penalties as an amendment to the Boards disciplinary guidelines.
SECONDED: Douglas D. Lee, M.D.
VOTE: 10-yay, 0-nay, 0-abstain/recuse, 2-absent
MOTION PASSED.

The Board Members discussed if a subcommittee was necessary. They determined that it was not and requested that Ms. Cassetta submit a memo for their review at the June 2004 meeting.

Probation Costs
Ms. Orchard submitted a memo to the Board along with a fees schedule, the details of those fees, and how they arrived at the bottom line fee. Dona Pardo, Ph.D., R.N., commented that a flat fee would not be fair. There are the physicians who will max out Board Staff time and others who would be compliant. But, she stated that from a cost perspective and Board Staff efficiency that it might be the most effective way. Patrick N. Connell, M.D., suggested that Board Staff submit a fees schedule. Ms. Cassetta stated that statute requires the licensee to pay the costs associated with the probation annually during the probation, not at the end of the Probation. Dr. Megdal concurred with Dr. Connell that a fee schedule is needed because it would give the timing of the assessment. Dr. Schwager asked that Board Staff submit a proposal for the Board's review.

Probation as Discipline
Dr. Megdal inquired if Probation was considered as discipline and about early termination. Also, if a physician completes the continuing medical education (CME) early, should the probation remain in effect until the time period is fulfilled? Ms. Cassetta stated that if the Board feels that the physician only needs CME, the Board can articulate in its motion that the physician can request early termination once the CME is completed. If the Board has an egregious case and wants to keep that physician monitored for the entire period, the Board can articulate that the physician must complete the full term of Probation without the ability to request early termination. This would allow Board Staff to appropriately respond to requests for early termination of probation. Dr. Connell agreed that this should be taken care of during a formal interview. Mr. Brekke stated that the National Practitioners Data Bank (NPDB) and most malpractice insurance companies consider Probation as a more serious discipline than a Letter of Reprimand or Decree of Censure. He stated that in the formal hearing context the Board has the power to order CME within a period of time that is enforceable without Probation. Ms. Cassetta stated that the Board could submit an amendment to the Medical Practice Act to the Legislature that would allow the Board to impose a CME requirement without having to place the physician on Probation. Dr. Connell suggested that Board Legal Counsel look for a way to modify the statute to impose CME without Probation.

MAINTENANCE OF COMPETENCY IN LICENSURE
Dr. Schwager stated that there is a movement among specialty Boards to require certification be maintained every 7-10 years as ongoing training. There was a discussion at the Federation of State Medical Board (FSMB) meeting regarding the public's perception that state licensing boards assure the continuing competency of their licensees. The FSMB did pass a resolution that it is the responsibility of the Medical Boards to assure the ongoing competency of its licensees. Dr. Pardo stated that Canada has something similar to this already implemented. Dr. Goldfarb stated that each medical specialty deals with this already. Dr. Lee suggested that Board Staff prepare a report for the Board that reviews the Canadian structure.

FSMB REVISION OF MODEL MEDICAL BOARD STATUTES
Dr. Schwager stated that at the Federation of State Medical Board (FSMB) meeting the Model Medical Board Statutes were revised to add the statement that "whereby part of unprofessional conduct would include false testimony by an expert witness as part of a malpractice allegation." He stated that this would be a very difficult allegation to sustain if it were part of the Medical Practice Act. It is one more element for those who provide expert testimony to think through whether they are doing it for the right reasons, especially if it might place their license in some jeopardy. Ms. Cassetta asked who would decide if a statement was false, fraudulent, or deceptive? Dr. Schwager stated that this would be difficult to prove. Dr. Megdal suggested that Board Staff research this thoroughly because there may be unintended consequences that result from this. Mr. Wolf agreed.

The meeting adjourned at 3:45 p.m.

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Barry A. Cassidy, Ph.D., P.A.-C, Executive Director